

Timely and Reasonable Guidelines

I. Background

The purpose of this document is to provide water systems, local governments, and applicants for water service, guidance on possible approaches to determine whether water service can be provided to new water service connections in a *timely and reasonable* manner. This guidance is being developed pursuant to the direction in the Public Water System Coordination Act (Coordination Act), chapter 70.116.060 RCW. The Municipal Water Law (RCW 43.20.260) also references *timely and reasonable manner*. Although each of these statutes uses the phrase *timely and reasonable*, the statutes do not share a consistent use of the phrase. This guidance document addresses the concept of *timely and reasonable* within the context of each statute.

As many scenarios exist around provision of service in a timely and reasonable manner, providing a precise definition of *timely and reasonable manner* for broad usage is not useful. The following *general* guidance is provided to assist local governments and utilities in the development of definitions of *timely and reasonable* tailored to meet the specific needs of their community.

Note: The Department of Health will not take an oversight role in determining whether service can be provided in a *timely and reasonable manner*.

II. Goals

To ensure developers, utilities and local permitting agencies work together to determine the most appropriate way to provide safe and reliable water service for a particular development.

III. Public Water System Coordination Act

A. Background

The Coordination Act provides a locally driven foundation for the definition of and procedures behind *timely and reasonable* provision of service (the Coordinated Water System Plan (CWSP), as adopted by the local legislative authority and approved by the Department of Health). The Coordination Act affects development within a Critical Water Supply Service Area (CWSSA) (designated under Chapter 70.116 RCW) and, therefore, does not apply in all areas of the State.

The Coordination Act states that "...no other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a *timely and reasonable* manner..." (RCW 70.116.060(b)).

If an applicant for service wishes to appeal a utility's decision on the basis that the utility cannot provide service in a *timely and reasonable manner*, the applicant for service must follow appeal procedures identified in the CWSP.

B. Timely and Reasonable

The Department of Health suggests that the local legislative authority formally adopt legislation or administrative rules that define *timely and reasonable* provision of water service, as well as a dispute resolution/appeals process and that both elements are developed through a public process.

1. Timely

Within the Coordination Act, "an existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority." (RCW 70.116.060 (3)(b)). The statute does not specify the point from which the 120-day period begins.

Legislation or rules adopted by the local legislative authority may or may not provide a specified day timeframe, but should provide clarity around the specific actions that begin and complete service provision process.

For example: the local legislative authority may formally adopt a procedure that the "timely service" clock commences at the date of a completed request, as reasonably determined by the purveyor, for water service and ends at the time of a completed formal agreement, certificate of water availability, or other form of written service commitment (unless otherwise agreed upon by both parties as part of that agreement).

In the event that the local legislative authority does not adopt formal legislation or rules, the water purveyor should formally adopt procedures for the provision of timely service, incorporating a 120 day timeframe. The Department of Health suggests that the 120 calendar day clock for the provision of timely service begins on the date a formal agreement is completed (unless otherwise agreed upon by both parties as part of that agreement).

Note: the completion of a formal agreement should be defined and could include required permits, water rights, design, and other items.

2. *Reasonable*

The Department of Health suggests that an existing water system's conditions of service could be considered reasonable if:

- a. The conditions of service are consistent with local land use plans and development regulations and;
- b. the conditions of service and associated costs are consistent with the conditions of service documented in the purveyor's approved water system plan and;
- c. the conditions of service and associated costs are consistent with the purveyor's acknowledged standard practice as experienced by other applicants requesting similar water services.

IV. **Municipal Water Law**

A. Background

The Municipal Water Law requires municipal water suppliers (as defined by RCW 90.03.015 (3)) to provide retail water service to new service connections (RCW 43.20.260) within their retail service area if its service can be available in a *timely and reasonable* manner. The Municipal Water Law also incorporates other aspects into a utility's duty to serve expectation (outside of *timely and reasonable* considerations).

Note: Water system plans approved by the Department of Health after September 9, 2003 require municipal water suppliers to identify their retail service area.

B. Timely and Reasonable

Although the Municipal Water Law does not specify a local government jurisdictional foundation for *timely and reasonable* considerations, the Department of Health suggests that the local legislative authority adopt (using a public process):

- Legislation and/or rules around the provision of *timely and reasonable* service and
- a *timely and reasonable* dispute resolution/appeals process.

1. *Timely*

The Department of Health suggests that the following process could be used by a municipal water supplier to provide service in a *timely* manner:

- a. The applicant submits a written request for service to the water utility.
- b. Within 120 calendar days, the water utility responds (with a contract proposal or a commitment to provide service) to the applicant's written request for service.
- c. Within 120 calendar days of receipt of the utility's contract proposal, the applicant accepts the contract, enters into continued contract negotiation or identifies the contract as unreasonable (triggering the dispute resolution process).

2. *Reasonable*

The Department of Health suggests that a municipal water supplier's conditions of service could be considered reasonable if:

- a. The conditions of service are consistent with local land use plans and development regulations and;
- b. the conditions of service and associated costs are consistent with the conditions of service documented in the purveyor's approved water system plan and;
- c. the conditions of service and associated costs are consistent with the purveyor's acknowledged standard practice as experienced by other applicants requesting similar water services.

In the event that the local legislative authority does not adopt formal legislation or rules around the provision of *timely and reasonable service*, the water purveyor should formally adopt procedures (see above) for the provision of timely service, including a dispute resolution/appeals process. The Department of Health suggests these elements be developed using a public process.